

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

MAR -8 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0249-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
GILBERT GAMEZ SANCHEZ,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-65589

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Gilbert Gamez Sanchez

Buckeye  
In Propria Persona

\_\_\_\_\_  
B R A M M E R, Judge.

¶1 Gilbert Sanchez was convicted of burglary and aggravated assault; the latter was designated a dangerous offense. The trial court imposed concurrent, aggravated prison terms of three years and fifteen years based on Sanchez's having prior felony convictions. This court affirmed the convictions and sentences on appeal and later denied relief on Sanchez's petition for review of the trial court's ruling on his first post-conviction petition,

filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. *State v. Sanchez*, No. 2 CA-CR 2000-0075 (memorandum decision filed July 25, 2003); *State v. Sanchez*, No. 2 CA-CR 2003-0144-PR (memorandum decision filed Oct. 21, 2004). He now seeks review of the trial court's denial of relief on his second post-conviction petition, a ruling we review for an abuse of the court's discretion. *See State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001).

¶2 Sanchez raised several claims that, as the trial court noted, fell into four general categories: trial and sentencing counsel were ineffective in several ways, the prosecutor committed misconduct during trial, the trial court failed to consider mitigating evidence at sentencing,<sup>1</sup> and newly discovered evidence entitles him to be resentenced to mitigated prison terms. In denying relief, the trial court found the first three claims were precluded, either because they had been raised in Sanchez's first post-conviction proceeding or because they were waived by not being raised. The trial court did not err in so ruling.

¶3 Sanchez raised three ineffective assistance claims about trial counsel in his first post-conviction proceeding on which the trial court conducted an evidentiary hearing. Therefore, Sanchez was precluded from raising new ineffective assistance claims about trial counsel. *See* Ariz. R. Crim. P. 32.2(a)(2); *State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (defendant precluded from raising new ineffective assistance claims by having

---

<sup>1</sup>Sanchez has not pursued this claim on review.

previously raised them). And he waived any claims about sentencing counsel by failing to raise them in his first post-conviction proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3).

¶4 Finally, Sanchez sought to be resentenced, based on his claim of newly discovered diagnoses that he suffers from hepatitis C and third-stage cirrhosis. In denying relief on that claim, the trial court stated: “The Court finds had the Court known, as the Court now knows, that [Sanchez] had this Hepatitis C issue and Cirrhosis of the liver, it would have not changed the Court’s sentence. The Court believes that the sentence was appropriate, as it still does today given his record.”

A trial court has broad discretion to determine the appropriate penalty to impose upon conviction, and we will not disturb a sentence that is within statutory limits, as petitioner’s is, unless it clearly appears that the court abused its discretion. We will find an abuse of sentencing discretion only if the court acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing.

*State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003) (citations omitted).

¶5 We find no abuse of discretion in the trial court’s decision to deny post-conviction relief based on its determination that it had imposed an appropriate sentence originally and that it would have imposed the same sentence even had it known about Sanchez’s illnesses at the time of sentencing. *See Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d at 150.

¶6 We do not address Sanchez’s arguments about the merits of the trial court’s ruling on his first post-conviction petition; we addressed that ruling in denying relief on his

previous petition for review. We do not address his claim that the trial court erred in forcing him to go to trial despite his attorney's telling the court they could not win. Sanchez raised this claim below only as an ineffective assistance of counsel claim. *See State v. Herrera*, 183 Ariz. 642, 648, 905 P.2d 1377, 1383 (App. 1995) (appellate court does not address claims not first presented to trial court). We do not address Sanchez's claims that the trial court improperly answered jurors' questions or improperly imposed aggravated sentences because he did not raise them below. *See id.* And we do not address his claims about the effectiveness of his Rule 32 counsel because he did not raise them until his reply to the state's response to his post-conviction petition and because his constitutional right to effective counsel did not extend to Rule 32 counsel. *See Ariz. R. Crim. P. 32.5* (post-conviction petition must contain all raisable claims); *State v. Armstrong*, 176 Ariz. 470, 474-75, 862 P.2d 230, 234-35 (App. 1993).

¶7 Accordingly, although we grant the petition for review, we deny relief.

---

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

---

PETER J. ECKERSTROM, Presiding Judge

---

PHILIP G. ESPINOSA, Judge